IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 441 of 2003

Date of Decision: March 27 , 2006

H.R.T.C. …Appellant.

Versus.

Smt.Meera Devi & anr. .. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr. H.S.Rawat, Advocate.**

For the Respondent(s): **Mr. M.S.Guleria, Advocate with Mr. Lakshya] Thakur, Advocate, for respondents 1 and 2.**
Pt. Om Prakash, Advocate, for respondent No.3.

Deepak Gupta, J.

This appeal under Section 173 of the Motor Vehicles Act is directed against the award of the Motor Accident Claims Tribunal, Mandi, in Claim Petition No. 58 of 2001 decided on 1.7.2003 whereby he has awarded compensation of Rs.3,17,200/- along with costs and interest in favour of the claimants.

The brief facts of the case are that claimants Smt. Meera Devi and Prem Singh are the parents of the deceased Upmanyu. On 31.5.2001 the deceased was travelling on scooter No.HP-28-215 towards Sarkaghat and when he reached at a place known as Nabahi, there was an accident between the scooter and bus No.HP-28-715.

According to the claimant, the accident had occurred due to rash and negligent driving of Gian Chand who was the driving the bus. On these averments, a claim petition was filed seeking compensation of Rs. 15 lacs. The owner and driver of the bus contested the claim petition. According to them, the driver on seeing the scooter coming at a high speed had stopped the bus. Despite this the scooter which was being driven in a rash and negligent manner struck against the bus. The Tribunal after recording the evidence and hearing the arguments, awarded a sum of Rs.3,17,200/-. This award is under challenge before me and according to the appellants, the learned Tribunal has erred in holding that the accident had occurred due to the negligence of the bus driver.

As far as the issue of negligence is concerned, PW3 Lekh Ram was produced by the claimants who is stated to be an eye witness to the accident. According to this witness, the bus No.HP-28-715 was being driven at a very high speed. The scooter was coming from Mandi side. The bus driver did not blow the horn at the site where there is a curve. There was collusion between the scooter and the bus. According to this witness, the accident occurred due to the negligence of the bus driver. In cross-examination, he has stated that he came to know that the name of bus driver is Gian Chand from some people who gathered on the spot. He further states that about 40 to 50 shops are situated in Nabahi which were below the site of the accident. He

could not identify or name any person present on the spot. He was not a summoned witness and was brought by claimant Prem Singh. He states that his statement was recorded by the police. Other than this witness, the claimants did not record any evidence. However, PW2 claimant Prem Singh in his cross-examination had stated that the deceased had a learner licence which licence was not produced. Gian Chand bus driver appeared as RW1/1. According to him, when he saw the scooter, he stopped the bus and still the scooter which was coming at a high speed hit the bus. He then went to arrange a jeep to take the injured to hospital but in the meantime some persons came to the spot and took the injured to hospital. He lodged the FIR and according to him, the challan was cancelled by the police. In cross-examination, he has denied the suggestion that he was driving the bus in a rash and negligent manner. He has also denied the suggestion that since the relatives of the deceased were all busy getting the injured treated, he (the witness) got a false case lodged.

RW1/2 Ludar Singh has been examined by the appellants. According to him, he was travelling in the bus in question. He supports the driver and states that the bus had been stopped when the scooter hit the bus. In cross-examination he has admitted that there was a curve at the place of the accident and the vehicle coming from the other side is not visible. He is also not a summoned witness.

The matriculation certificate of the deceased is on record. This shows that his date of birth of the deceased was 9.8.1993. The accident occurred on 31.5.2001. At that time, the deceased had not even completed 18 years. He could obviously not have held a driving licence and, therefore, the version of the claimants that the deceased was the holder of a driving licence appears to be false. There is negligence on the part of claimant Prem Singh inasmuch as he has handed over his vehicle to his son who was not even legally entitled to drive the scooter.

Unfortunately, in this case no cogent evidence has been led by either side to prove the cause of the accident. Neither the claimants nor the HRTC thought it fit to examine the investigating officer from the police. Admittedly, FIR was lodged and the police must have prepared the spot map indicating where the accident occurred. The accident has taken place on a curve. However, the version of driver of the bus that he stopped the vehicle on seeing the scooter coming from the other side does not appear to be correct. Even his own witness admits that the accident occurred on a curve and the vehicle coming from the other side is not visible. The version of PW3 and RW2 is also not reliable and much reliance cannot be placed on this.

From the material on record, it is apparent that the deceased was not the holder of a driving licence. In fact, he not even being 18 years old could not have been permitted to drive the scooter. On the

other hand, the version of the driver that he had stopped the vehicle does not appear to be true. A collision has admittedly taken place on a curve. Therefore, in my opinion, for lack of other evidence that all can be said that the accident occurred due to the contributory negligence both on the part of the scooterist and the bus driver in equal measure.

The learned Tribunal has awarded Rs.3,1,7,200/- as compensation. It is contended by the appellant-HRTC that this amount is very much on the higher side. In my opinion, the overall amount of compensation awarded cannot be said to be excessive. However, since the deceased himself was equally negligent for the accident, the claimants are only held entitled to half of this amount i.e. Rs.1,58,600/-.

In view of the above discussion, the appeal filed by the appellant –HRTC is allowed and the compensation reduced from Rs.3,17,200/- to Rs.1,58,600/- with interest as awarded by the learned Tribunal. No costs.

March 27, 2006. (Deepak Gupta), J.
s.